IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3050 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KACHRAJI DHULAJI PARMAR

Appearance:

1. Special Civil Application No. 3050 of 1989

MR PRANAV G DESAI for Petitioner No. 1

MR MH SHAIKH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/05/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Upadhyay for Mr. Pranav G. Desai for the petitioner corporation. Learned advocate Mr.M.H. Shaikh who was appearing for the respondent has already expired and on his behalf, nobody

has appeared. The respondent has not engaged any advocate. Therefore, the matter has been taken up for final hearing in absence of the respondent.

In this petition, the petitioner corporation has challenged the award made by the labour court concerned in Reference No. 1598 of 1984 dated 11th January, 1989 wherein the labour court has granted reinstatement of the respondent workman on the alternative post and denied total back wages for the intervening period while imposing punishment of stoppage of three increments with future effect. This Court has, while issuing rule, has granted interim relief in terms of para 13(B) of the petition subject to provisions of section 17-B of the Industrial Disputes Act, 1947. This order was passed by this Court on 28th April, 1989.

Learned advocate Mr. Upadhyay for Mr. Desai for the petitioner has contended that the labour court has committed gross error in exercising the powers under section 11-A of the I.D. Act, 1947. He has submitted that the respondent has committed the misconduct of dishonesty and misappropriation in not issuing the tickets after recovering the amount of fare from the passengers concerned. According to him, such misconduct of misappropriation and dishonesty of collecting fare and not issuing tickets has been proved and such findings were accepted by the labour court. According to him, since the legality, validity and propriety of the departmental inquiry was not challenged by the workman before the labour court and his past record was bad and such similar type of misconduct has been committed by the respondent workman in past and various punishments were imposed and in such a situation, the labour court ought not to have exercised the powers under section 11-A of the Industrial Disputes Act,1947. He has read before this court para 16 page 27 of the award in question wherein the labour court has observed while exercising the powers under section 11-A of the Industrial Disputes Act,1947 and has relied upon the two decisions of the apex court reported in 2000 (7) SCC 517 and 2000 (9) SCC 521 and has submitted that in such a situation, it was held by the apex court that to grant reinstatement would amount to mis-sympathy to such an employee who has committed the misconduct of dishonesty and misappropriation and in such a situation, powers cannot be exercised by the labour court under section 11-A of the Industrial Disputes Act, 1947 in favour of the workman concerned. Relying upon the ratio laid down by the apex court in the aforesaid two decision, he has submitted that the labour court has committed gross error

and, therefore, this court should interfere with the findings recorded by the labour court. He has also relied upon the decision in case of Devendra Swamy versus Karnataka Road Transport Corporation reported in JT 2001 (10) SC 433.

I have considered the submissions made by Mr. Upadhyay. Before entering into the merits of the matter and also before considering the decisions cited by Mr. Upathyay, it is necessary to be noted that the award in question was given by the labour court concerned in the year 1989 by considering the law which was prevailing at the relevant point of time as regards exercise of the powers under section 11-A of the I.D> Act, 1947. The decisions cited by Mr. Upathyay now before this Court were not available at the relevant time and were not holding the field at the time when the judgment was delivered by the labour court. It is an admitted fact that the workman concerned was on duty as conductor on 29.4.82 on the bus from Idar to Rani. That while he was on duty, at that time, his bus was checked by the checking staff and during the course of the said checking, certain irregularities were found in respect of which report was made. It was alleged that from one passenger travelling from Vijaynagar to Rani, an amount of Rs.00.50 ps. was recovered but the ticket has not been issued and it has been alleged that from the eleven persons, fare was collected but the tickets were not issued. In reference to the said report, he has been served with a charge sheet dated 25.5.82 and reply to the said charge sheet was submitted and thereafter, departmental inquiry was initiated against him wherein he was ultimately dismissed from service. Therefore, the workman concerned raised industrial dispute and the same was referred to the labour court for adjudication wherein the labour court concerned has by impugned award, ordered for reinstatement of the workman.

Before the labour court, either side has not led any oral evidence. The labour court has come to the conclusion that the departmental inquiry which was conducted against the respondent is legal and valid and the principles of natural justice have not been violated. Thereafter, the labour court examined the merits of the matter and has appreciated that the respondent has completed about fifteen years' service and considering his past record which was produced at Exh. 27, the labour court has found that the punishment of dismissal from service is harsh and unjustified. The labour court has considered that the fare was collected but tickets were not issued and, therefore, the conductor cannot be

reinstated on the same post and, therefore, it ordered for reinstatement of the respondent on the alternative post. This question has been considered by the division bench of this Court in case of GSRTC versus Jamnadas Bechar, reported in 1982 (2) GLH 1057. It has been observed by the Division Bench of this Court on page 1057 of the said decision as under:

" There is a time for everything. There is a time for showing sympathy. There is also a time for being strict. Problems arise when one enters by the wrong "time door" and shows sympathy where strictness is called for and vice versa. And the present is the case which sharpens the profile of this problem. The Gujarat State Road Transport Corporation had dismissed a conductor who was found guilty of collecting fare from passengers without issuing tickets. The Labour Court which was exercising jurisdiction for reducing punishment under section 11-A of the Industrial Disputes Act of 1947 had undoubtedly wide discretion in the matter of reduction of punishment, as held by us in R.M. Parmar v. Gujarat Electricity Board, Baroda 23 GLR 352 (1982 GLH 254). We reaffirm the nine propositions encunciated therein, viz:

'(1) There is widespread unemployment in our country and it is difficult to secure a job to earn enough to keep body and soul together unlike in developed countries;

(2) The State does not provide social benefits like unemployment allowance to enable a discharged employee to sustain himself and his family to some extent, as is being done in the developed countries;

(3) In imposing punishment on an erring employee an enlightened approach informed with the demands of the situation and the philosophy and spirit of the times requires to be made. It cannot be a matter of ipse dixit of the disciplinary authority depending on his whim or caprice;

(4) Be it administration of criminal law or the exercise of disciplinary jurisdiction in departmental proceedings, punishment is not and cannot be the 'end'

in itself. Parliament for the sake of punishment cannot be the motto. Whilst deliberating upon the jurisprudential dimension the following factors must be considered;

1. In a disciplinary proceeding for an alleged fault of an employee punishment is imposed not in order to seek retribution or to give vent to feeling of wrath.

2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach appears to make towards an erring or misguided child.

3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of them. It would be counter productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness, it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When penalties of different categories can be imposed in respect of the alleged fault one of which is dismissal from service, the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to then nature, extent and gravity of the default.

Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employer the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask his inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be overlooked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time consuming machinery to challenge in desperation the order passed by the disciplinary authority, If a lesser penalty was imposed, he might not have been obliged to make recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employee has often to pay back wages say for about five years without being able to take work from the employee concerned. on the other had, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses a feeling of antagonism in

the collective mind of the workers and gives rise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instance, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, by it may, yield to it in moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity. (And even tax evasion or possession of black money is not considered to be dishonourable by and large). A penalty of removal from service is, therefore, not called for when a poor worker yields to a moment of temptation and commits an offence which often passes under the honourable name of kleptomania when committed by the rich.'

In para 2 of the said report, it has been observed by the Division Bench of this Court as under:

"2. We are however constrained to elaborate the rider added by us in proposition No. 9 wherein it has been observed by us that when an employee holding a sensitive post of trust has been dismissed from service the matter may have to be viewed in a different light. By way of illustration we have referred to pilferage by a cashier or a store keeper from the stores in his charge. Perhaps we should have anticipated a situation like the present and referred to misappropriation by a bus conductor who has collected fare from passengers but has failed to issue tickets to them. It a bus conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him

to indulge in the same mal practice in future. Everyday, he has to collect fare and issue tickets. Reinstatement in the same post would therefore involve grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and daily temptation that he would face. Perhaps he would be tempted to repair the past losses. Under the circumstances, when in a fit case the Labour Court reaches the conclusion that misappropriation by a bus conductor has been established (in view of the evidence showing that he had collected the fare from the passengers but had not issued tickets though he had sufficient opportunity to do so in circumstances going to show that there was a dishonest intention), the Labour Court would have to think more than twice before directing reinstatement in the same post as conductor when he would be afforded the same opportunity or faced with the same temptation and the corporation would be exposed to the same risk every day. But it realized that misappropriation by a bus conductor must be viewed with a degree of seriousness especially having regard to the fact that it would make successful working of a public corporation impossible. In case misappropriation by a conductor is detected and he is found guilty, punishment must be deterrent to him as also to others, for misappropriation in such circumstances would be in relation to public moneys and the burden would fall on the shoulders of the common man. And be it realized that 80 per cent of the total tax burden consists of indirect taxes which makes it impossible for the common man to stand erect and virtually makes him crouch on the ground. There is another tormenting reason for viewing the matter with anxious eyes. The Public Sector can never (NEVER) succeed if 'everyone's'property (which it in fact is) is treated as 'no one's' property. The New Culture for the New Man of New India must therefore be National Interest above all other interests including self interest, sectional interest or class interest. And, therefore, the bus conductor, poor as he is, may have to suffer. We suffer more than him in having to say so, particularly because big sharks never get caught. If they get caught they more often than not escape with impunity. But then merely because we cannot prevent the sharks escaping we cannot permit the fly to trifle with Pulic Property

> which is the poor men's collective property [if we envision for them a sun-lit day even on some distant morrow in the hidden future]. Under the circumstances, the Labour Court was not justified in reinstating a conductor who had collected fare, pocketed the same, and robbed the National Exchequer, in the same post where he could re-indulge in the same weakness at public cost. The labuor court can, depending upon facts and circumstances of the case and of the offender direct that he should be absorbed in the workshop section or some other similar post which does not involve daily handling of money. That must be left to the Labour Court. And the Labour Court would have to decide the issue having regard to facts and circumstances of each case and the demands of the situation in the context of each matter."

This was the law which was prevailing at the relevant time as regards the scope and powers of the Labour Court and the Industrial Tribunal under section 11-A of the Industrial Disputes Act, for reinstatement of a conductor on the alternative post when the charges of misappropriation are levelled against the workman. At the relevant point of time, this judgment was holding the field and considering this decision, the labour court has granted relief of reinstatement in favour of the workman concerned on the alternative post. Therefore, on the basis of the subsequent development relied upon by Mr. Upadhyay, the award in question made by the labour court cannot be tested. It is not the case of the petitioner that the past record though produced, has not been considered by the Labour Court. The past record produced vide Exh. 27 before the labour court has been considered by the labour court and that is the reason why the labour court has made an order to reinstate the respondent workman on the post which is not involving the financial transactions, to safe guard the interest of the corporation on one hand and has ordered to impose punishment of stoppage of three annual increments of the respondent workman with future effect having recurring loss which may run in thousands of rupees upto the retirement and thereafter in retiral benefits also. Not only that, the labour court has also denied total back wages for the intervening period while reinstating the respondent workman under section 11-A of the Industrial Disputes Act, 1947. The apex court has considered this aspect in case of Jitendra Singh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd. reported in AIR 1984 SC

976 wherein it has been held that where the tribunal while directing reinstatement withheld payment of half of the back wages keeping in view the proved misconduct of the employer, withholding of half of the back wages in the nature of penalty, in such a case, it could not be said that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty. In para 3 and 4 of the said decision, it has been observed by the apex court as under:

"3. While discretion is vested in the Tribunal under this provision and in a given case on the facts established the tribunal can vacate the order of dismissal or discharge and give suitable directions. It is a well settled principle of law that when an order of termination of service is found to be bad and reinstatement is directed, the wronged workman is ordinarily entitled to full back wages unless for any particular reason the whole or a part of it is asked to be withheld. The Tribunal while directing reinstatement and keeping the delinquency in view could withhold payment of a part or the whole of the back wages.In our opinion, the High Court was right in taking the view that when payment of back wages either in full or part is withheld, it amounts to a penalty. Withholding of back wages to the extent of half in the facts of the case was, therefore, by way of penalty referable to proved misconduct and that situation could not have been answered by the High Court by saying that the relief of reinstatement was being granted on terms of withholding of half of the back wages and, therefore, did not constitute penalty.

4. Under S.11A of the Act, advisedly, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Art. 227 of the Constitution does not enjoy such power though as a superior court, vested with the right of superintendence. The High Court is indisputably entitled to scrutinise the orders of subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to

> exercise the powers of the tribunal and substitute an award in place of toe one made by the tribunal as in the case of an appeal where it lies to it. In this case, the tribunal had directed the reinstatement, the High Court vacated the direction of reinstatement and computed compensation of rupees 15,000.00 in lieu of restoration of service. We are not impressed by the reasoning of the High Court that reinstatement was not justified when the tribunal in exercise of its wide discretion given under the law found that such relief would meet the ends of justice. The Tribunal had not recorded a finding that there was loss of confidence of the employee. The job of a librarian does not involve the necessity of enjoyment of any special confidence of the employer. At any rate, the High Court too did not record a finding to that effect. Again, there is no indication in the judgment of the High Court as to how many years of service the appellant had put in and how many years of service were still left under the Standing Orders. The salary and other service benefits which the appellant was receiving also did not enter into the consideration of the High Court while computing the compensation. We are, therefore, of the view that the High Court had no jurisdiction to interfere with the direction regarding reinstatement to service and in proceeding to substitute the direction by quantifying the compensation of Rupees 15000/- it acted without any legitimate basis. "

I have considered the decisions cited by the learned advocate Mr. Upadhyay for Mr. Desai for the petitioner. Relying upon the said decisions which are recent one, learned advocate Mr. Upadhyay has submitted that the labour court has erred in granting reinstatement in favour of the workman on the alternative post. However, according to my opinion, award made by the labour court on the basis of the law prevailed at the relevant point of time cannot be tested on the basis of the subsequent development in the principles of judicial review. In the instant case, the labour court has made the award on the basis of the law which was prevailing in the year 1989 when the judgment of the Division Bench of this Court in case of GSRTC vs. Jamnadas Bechar (supra) was holding the field and on the basis of the principles laid down in the said decision, the award was delivered by the labour court granting reinstatement on the alternative post. Therefore, according to my opinion,

though the labour court has found that the misconduct alleged was found to be proved and inquiry was proved to be legal and valid and post record is bad and yet the labour court has exercised the powers and discretion vested in it on the basis of the law laid down by this Court in aforesaid decision. Therefore, according to my opinion, it cannot be said that the award made by the labour court is contrary to the facts on record or the findings recorded by it are perverse and contrary to the law which was holding field at the relevant point of time. In exercise of the powers vested in it under section 11A of the Industrial Disputes Act, 1947, the labour court found that the punishment of dismissal was harsh and excessive and, therefore, the labour court made the award in question granting reinstatement of the respondent on the alternative post without back wages and also imposed stoppage of annual increments with future effect. Therefore, according to my opinion, the labour court has applied its mind in respect of the facts and circumstances of the case and has rightly exercised such powers and discretion and has rightly granted reinstatement on the alternative post in favour of the respondent workman.

This Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S. HANKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution of India in case of OUSEPH MATHAI AND OTHER V. M. ABDUL KHADIR reported in 2002 [1] SCC 319. The relevant observations in para 4 & 5 are quoted as under :-

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In Warayam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Division & Appeals. In Babhutmal Raichand Oswal v. Laxmibai It. Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in R. V. Northumberland Compensation Appeal Tribunal, ex p Shaw [All ER at p.128] This Court in Chadavarkar Sita Ratna Rao v. Ashalata S. Guram held : [SCC pg.460, para 20]

"20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of the fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a findings are perverse and not based on any material evidence or it resulted in manifest injustice [see Trimbak Gangadhar Telang]. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indiction of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limit of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

Recently also, the Apex Court has considered the scope of Article 226 and 227 of the Constitution in case of ROSHAN DEEN VS. PREETILAL reported in [2002] 1 SCC Pg.100. Relevant observations in para-12 are quoted as under :-

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilize all possible legal measure to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High

> Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it [vide State of U.P. v. District Judge, Unnao]. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

In view of the observations made by the apex court and while examining the award in question, according to my opinion, quite right and reasonable award has been made by the labour court keeping in view the length of service of the respondent which was 15 years in this case and 44 and one and half passengers had boarded from Vijaynagar to Rani; fare of Rs.00.50 ps. for the route suggests the distance between two station; whole group boarded from Vijaynagar for Rani and considering the amount of fare of Rs.00.50 ps. suggests that the distance was short between Vijaynagar to Rani which hardly takes 3 to 5 minutes and during this period, if the workman concerned has collected fares but has not issued the ticket and if in the meanwhile his bus has been checked and the passengers boarded from Vijaynagar for Rani were found without tickets from whom fare has been recovered, then, in view of the short distance between the said two stations, it cannot be said that there was intention on the part of the workman to misappropriate the amount of the fare by not issuing the tickets. In the peculiar facts of this case, i.e. in view of the short distance between the said two stations, no such intention to commit misconduct of misappropriation could be attributed to the respondent herein. While he has been doing the road booking after collecting the fare from the passengers boarded from Vijaynagar for Rani, in view of the short distance, he has not been able to issue the tickets immediately and his bus has been checked. In view of such eloquent facts, it cannot be said that there is an intentional act of misappropriation and dishonesty and these facts are required to be kept in view while considering various factors and surrounding circumstances, otherwise, each and every of such case would become the case of misappropriation and dishonesty.

In the decisions relied upon by Mr.Upadhyay, dishonesty and misappropriation was found to be proved wherein intentional act of dishonesty and misappropriation on the part of the workman concerned was proved whereas in this case, in view of the facts of this case, it cannot be said that there was intentional act of dishonesty and misappropriation on the part of the workman concerned. Therefore, the principles laid down in the said decisions cannot be made applicable to the present case. Further, as stated earlier, the award of the labour court is in accordance with the law which was holding field at the relevant point of time and the judgments now cited before this Court by the learned advocate for the petitioner were not available at the relevant time before the labour court. In view of that, it cannot be said that the findings recorded by the labour court are perverse or not in consonance with the law which was holding field at the relevant point of time. There is no infirmity in the award made by the labour court. Mr. Upadhyay has not been able to point out any procedural irregularity and/or jurisdictional error committed by the labour court warranting interference of this Court in exercise of the powers under Article 227 of the Constitution of India. Therefore, there is no substance in this petition and the same is required to be rejected.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

It is necessary to be noted that this matter has been admitted by this court on 28th April, 1989. More than 12 years have gone. However, Mr. Upadhyay has not been able to state whether the respondent has been paid the benefits under section 17B of the ID Act, 1947 or not. Since the award has been stayed by this court, and it was subject to sec.17B of the Act, it was the duty of the petitioner to comply with sec.17B of the Act. Inspite of that, Mr. Upadhyay has not been able to point out before this Court that they have complied with sec.17B of the Act or not. In this matter, interim relief against the award in question has operated since last 12 years. Therefore, according to my opinion, it would be just and proper to issue some suitable directions to the petitioner corporation to implement the award in question.

Therefore, it is directed to the petitioner

corporation to reinstate the respondent workman in terms of the labour court's award within one month from the date of receipt of copy of this order and to pay full wages to the respondent workman w.e.f. 11th January, 1989 the date of award till the date of actual reinstatement of the respondent after adjusting the payments made by it, if any, to the respondent under section 17B of the I.D. Act, 1947, within two months from the date of receipt of copy of this order.

4.5.2002. (H.K. Rathod,J.)

Vyas